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FILED
DEC 27 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-702

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

METROPOLITAN COUNTY BOARD OF EDUCATION OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, *et al.*,
Petitioners,

v.

ROBERT W. KELLEY, *et al.*,
Respondents.

On Petition for a Writ of Certiorari
To The United States Court of Appeals
For the Sixth Circuit

SUPPLEMENTAL BRIEF AND APPENDIX

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December 23, 1982.

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The Respondents have claimed in briefs previously filed with this Court that the District Court found in 1979 that the Board of Education has been guilty of *de jure* segregation. (Brief in Opposition, pp.12, 21-22; Reply to Brief of the United States, p.8 at n.4). In its brief supporting the Petition for Certiorari, the United States has indicated that the District Court's finding of *de jure* segregation "is problematic." (Brief for the United States as Amicus Curiae, p.4 at n.2). We have explained previously that the reference to "*de jure* segregation" made by

the District Court in 1979 was meant to be a description of the effects of the 1971 court order itself, not an indictment of the Board of Education. This interpretation was supported by the language in the District Court's opinion that expressly noted the Board's good faith implementation of the plan and by remarks made by the District Judge in open court. (Petition, pp.10-11 at n.5; Reply Brief, pp.2-3, p.4 at n.3; A-45; R. June 26, 1979 hearing, Vol. III, p.32).

After the filing of the briefs, the District Court held further hearings on matters not now before this Court.[1] During these hearings a significant colloquy between the District Court and Petitioners' counsel occurred that confirms our prior understanding of the District Court's use of the term "*de jure.*" We submit this Supplemental Brief with a copy of the transcript of the colloquy in the attached Appendix, pursuant to Rule 22.6 of the Rules of this Court.

As the transcript demonstrates, the District Court stated clearly and unambiguously that it "*never made*" a finding that the School Board has been guilty of *de jure* segregation. (emphasis added). To the contrary, and as we have argued previously, the language regarding *de jure* segregation was directed toward the geographic scope of the 1971 order itself, which in spite of the Board's good faith efforts in implementation, had resulted in some resegregation. (Petition, pp. 10-11 at n.5). The defects in the 1971 order, as demonstrated over the ensuing decade, were the impetus for the district court's new plan, not the actions of the Board of Education. Additionally, there is no basis

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[1] These hearings related primarily to Respondents' application for attorneys' fees.

for the contention that the School Board has engaged in unconstitutional activity within the past decade.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Supplemental Brief and Appendix has been mailed this 23rd day of December, 1982, to the following counsel:

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WILLIAM R. WILLIS, JR.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

ROBERT W. KELLEY, et al.,

PLAINTIFFS,

VS.

METROPOLITAN COUNTY BOARD OF EDUCATION, et al.,

DEFENDANTS.

NASHVILLE CIVIL CASE NOS. 2094, 2956

OFFICIAL TRANSCRIPT OF EXCERPT

AT NASHVILLE

DECEMBER 6, 1982

BEFORE: Hon. Thomas A. Wiseman, Jr., United States District Judge.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

ROBERT W. KELLEY, et al.,

PLAINTIFFS,

VS.

METROPOLITAN COUNTY BOARD OF EDUCATION, et al.,

DEFENDANTS.

NASHVILLE CIVIL CASE NOS. 2094, 2956

APPEARANCES:

On behalf of the plaintiffs:

Avon N. Williams, Jr., Esq.,
Richard H. Dinkins, Esq.,
Theodore M. Shaw, Esq. and
Bill Lann Lee, Esq.

On behalf of the defendants:

William R. Willis, Esq. and
Marian Harrison, Esq.

MR. WILLIS: Now the plaintiffs have made a claim, Your Honor, both in the Court of Appeals and in the Supreme Court and they raise it again in memoranda filed in this case and that is that this case is not final because Your Honor found in 1980 that the School Board had been guilty of de jure segregation.

THE COURT: The Court never made such a finding.

MR. WILLIS: That is the position we have taken both in the Court of Appeals --

THE COURT: Never made such a finding.

MR. WILLIS -- and Supreme Court of the United States and still confronted with it daily from the pleadings of the plaintiff.

THE COURT: Well, words are capable of misinterpretation and I remember quite well I never did. That sentence was introduced with the preface or prefatory remarks about the good faith -- despite the good faith effort of the Board or something similar.

MR. WILLIS: Yes. As I understand, it meant that the order of this Court itself had resulted --

THE COURT: Yes, sir, because of the limitations of the applicability of the order to a circle within the boundaries leaving untouched the then white suburbs. Go ahead.

REPORTER'S CERTIFICATE

I, John W. Tummel, Official Court Reporter for the United States District Court, Middle District of Tennessee, with office at Nashville, hereby certify that I recorded on the Stenograph Shorthand Machine the proceedings held in open court on December 6, 1982, in the matter of: Robert W. Kelley, et al., versus Metropolitan County Board of Education, et al., Nashville Civil Case No. 2094, 2956; and that the proceedings in connection with this trial were reduced to typewriting under my supervision; and that the foregoing is a true and correct transcript of the same.

This the 14th day of December, 1982.

John W. Tummel

Official Court Reporter